

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

STEVEN BUCKLEW,
Plaintiff,

v.

CIVIL ACTION NO. 1:10CV197

JO ANNE B. BARNHART, COMMISSIONER OF
SOCIAL SECURITY,
Defendant.

REPORT AND RECOMMENDATION/OPINION

On November 22, 2010, the plaintiff, Steven Bucklew, by Scott B. Elkind, his attorney, filed a Complaint in this matter [DE 1]. On February 16, 2011, Defendant filed his Answer to the Complaint, along with a copy of the Transcript of the Administrative Proceedings in this matter [DE 4, 5, 6].

On April 18, 2011, the undersigned United States Magistrate Judge entered an order directing Plaintiff to Local Rule of Civil Procedure 9.02(c), which provides:

Within thirty (30) days after the defendant has filed an answer and a complete copy of the administrative record, the plaintiff shall file a Motion for Summary Judgment and Memorandum in Support setting forth his or her claim(s) for relief. The plaintiff shall serve copies of his or her Motion for Summary Judgment and Memorandum in Support upon the United States Attorney's Office.

The undersigned advised that Plaintiff's Motion for Summary Judgment was therefore due on or before March 15, 2011, and a review of the docket revealed Plaintiff had not filed his Motion for Summary Judgment and Memorandum in Support thereof as of April 18, 2011, more than a month late. The undersigned therefore **ORDERED** Plaintiff, on or before May 2, 2011, to show good cause in writing, if any he could, why he failed to timely file his Motion for Summary Judgment and Memorandum in Support in accord with this Court's Local Rule. The order explicitly

warned that failure to do so would result in the undersigned recommending to the District Judge that this case be dismissed for failure to prosecute. A review of the docket as of May 19, 2011, more than a month after the show cause order was entered, and two weeks after the deadline, shows no response to the show cause order, and indeed, no further filings whatsoever.

RECOMMENDATION

For the above reasons, the undersigned respectfully **RECOMMENDS** that the plaintiff's Complaint (Docket No. 1) be **DISMISSED WITH PREJUDICE** for failure to prosecute and for failure to comply with the Local Rules and this Court's Order of April 18, 2011.

Any party may, within fourteen (14) days after being served with a copy of this Report and Recommendation, file with the Clerk of the Court written objections identifying the portions of the Report and Recommendation to which objection is made, and the basis for such objection. A copy of such objections should also be submitted to the Honorable Irene M. Keeley, United States District Judge. Failure to timely file objections to the Report and Recommendation set forth above will result in waiver of the right to appeal from a judgment of this Court based upon such Report and Recommendation. 28 U.S.C. § 636(b)(1); United States v. Schronce, 727 F.2d 91 (4th Cir. 1984), cert. denied, 467 U.S. 1208 (1984); Wright v. Collins, 766 F.2d 841 (4th Cir. 1985); Thomas v. Arn, 474 U.S. 140 (1985).

The Clerk of the Court is directed to send a copy of this Report and Recommendation to counsel of record.

DATED: May 19, 2011.

John S. Kaull

JOHN S. KAULL
UNITED STATES MAGISTRATE JUDGE